

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

| | | |
|---------------------------|---|------------------------------|
| MARK KLINGINSMITH, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. CIV-09-433-C |
| |) | |
| HECTOR LEDEZMA, |) | |
| |) | |
| Respondent. |) | |

REPORT AND RECOMMENDATION

Petitioner, a federal prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Robin Cauthron, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 6] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). See Lister v. Department of the Treasury, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should have issued a report and recommendation, recommending denial of the motion to proceed *in forma pauperis*.).

It is further recommended that unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court on or before the 22nd day of May, 2009, this action be dismissed without

prejudice to refiling. Petitioner is advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. Moore v. United States, 950 F. 2d 656 (10th Cir. 1991). The Clerk is hereby ordered not to forward a copy of the petition to the appropriate state agency until further order of the Court.

ENTERED this 5th day of May, 2009.



DOYLE W. ARGO
UNITED STATES MAGISTRATE JUDGE